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In the Supreme Court of the United States

OCTOBER TERM, 1951

No 495

WEIGERT-DAGEN, WEIGERT-DAGEN SHOE CO., J. F. GOLDKAMP & CO., PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court (R. 264-276) is reported in 25 Cust. Ct. 105. The opinion of the United States Court of Customs and Patent Appeals (R. 278-290) is reported in 86 Treasury Decisions, Advance Pamphlet No. 41, October 11, 1951, page 37.

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was rendered on June 26, 1951 (R. 291). A petition for rehearing was denied on September 28, 1951 (R. 325). A second petition for rehearing was denied on November 5, 1951 (R. 345). The petition for a writ of certiorari was filed on December 26, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. (Supp. IV) 1256.

QUESTIONS PRESENTED

1. Whether the Court of Customs and Patent Appeals erred in considering, as an aid in interpreting the term "huaraches" appearing in the Mexican Trade Agreement, information contained in certain Digests of Trade Data, the said Digests having been prepared and published by the United States Tariff Commission from information which it had previously submitted, prior to and during the negotiations with Mexico, to the Trade Agreements Committee, an interdepartmental body of the United States Government charged with carrying out the trade-agreement program.

2. Whether the Court of Customs and Patent Appeals erred in failing to hold that the testimony adduced in this case established a common or commercial meaning for the term "huaraches."

3. Whether the Court of Customs and Patent Appeals acted arbitrarily in denying the petitions for rehearing filed in behalf of petitioners.

STATUTE AND TRADE AGREEMENT INVOLVED

The pertinent parts of the Tariff Act of 1930 and the Trade Agreement entered into between the United States and Mexico are set forth in the Appendix, *infra,* p. 18.

STATEMENT

During the years 1943 and 1944, petitioners imported into the United States from Mexico at the ports of Laredo, Texas, and St. Louis, Missouri, certain footwear which was classified by the collectors of customs at Laredo and St. Louis, respectively, as "other footwear * * * not specially provided for" under the provisions of Section 1, Paragraph 1530(e) of the Tariff Act of 1930, *infra,* p. 18, with duty at 20 per centum ad valorem (R. 3-4, 9). The importers protested, contending that the footwear imported by them should have been classified as "huaraches" under Item 1530(e) of Schedule II of the Trade Agreement which had theretofore been entered into between the United States and Mexico, 57 Stat. (Pt. 2) 833, 892, *infra,* p. 18, with duty at 10 per centum ad valorem [1] (R. 8).

The collectors of customs at Laredo and St. Louis, respectively, affirmed their decisions (R. 9) and the protests and relevant papers were thereafter transmitted to the Customs Court in accord-

[1] It was stipulated by the parties in the court below that all of the protests involved in the case were substantially identical, that only one protest and collector's answer need be printed, and that such protest and answer should be deemed typical of all (R. 6).

ance with Section 515 of the Tariff Act of 1930 (46 Stat. 590, 734-735; 19 U. S. C. 1515). After a trial, at which extensive testimony was taken bearing on the common and commercial meaning of the term "huaraches," the Customs Court sustained the protests, holding that the footwear was properly classifiable as "huaraches"[2] under the Mexican Trade Agreement, with duty at 10 per centum ad valorem (R. 264-276). On appeal by the Government, the Court of Customs and Patent Appeals (one judge dissenting) reversed the decision of the Customs Court, holding that the footwear was not "huaraches" within the meaning of that term as used in the Mexican Trade Agreement, and that it was not, therefore, properly classifiable as such for duty purposes. In ascertaining that the imported footwear was not "huaraches" that court used as an aid in interpreting that term a definition thereof contained in the Digests of Trade Data prepared and published by the United States Tariff Commission, which Digests were said by the Commission to contain material drawn from the detailed data that it had submitted to the Trade Agreements Committee of the United States at the time the Mexican Trade Agreement was being negotiated.[3]

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[2] During the trial, the Customs Court, over the Government's objection, permitted amendments of certain of the protests to claim that the footwear there involved was properly classifiable as "slippers (for housewear)" under Item 1530(e) of the Mexican Trade Agreement. In its decision, the Customs Court sustained this claim (272-273).

[3] The Court of Customs and Patent Appeals also reversed the holding of the Customs Court that a part of the mer-

(R. 278-291.) Two petitions for rehearing were denied (R. 325, 345).

ARGUMENT

We submit that this case presents no question which warrants review by this Court. Section 1, Paragraph 1530(e) of the Tariff Act of 1930, 46 Stat. 590, 667, 19 U. S. C. 1530(e), *infra,* p. 18, laid a duty of 20 per centum ad valorem on certain footwear. Item 1530(e) in Schedule II of the Trade Agreement entered into between the United States and Mexico, *infra,* p. 18, lifted from the general terms of Paragraph 1530(e) of the said Tariff Act certain footwear known as "huaraches" and reduced the duty thereon to 10 per centum ad valorem. Thus the issue in the case concerns the interpretation, for duty purposes, of the term "huaraches" as used in the Mexican Trade Agreement. However, the Mexican Trade Agreement has been abrogated by mutual consent of the parties thereto. See 85 Treasury Decisions 252, 254. And we have found no provision in any

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chandise was classifiable as "slippers (for housewear)," on the ground that the Customs Court had erroneously permitted the applicable protests to be amended to claim a classification as slippers, the error of the Customs Court having arisen from the fact that the amendments added a new class of merchandise to the protests and amounted to new causes of action which had not been instituted within the 60-day statutory period permitted by Section 514 of the Tariff Act of 1930, 46 Stat. 590, 734, 19 U.S.C. 1514, for filing protests and were therefore untimely. The petition for a writ of certiorari does not urge this holding of the Court of Customs and Patent Appeals as a reason for the granting of a writ of certiorari.

other trade agreement setting up the term "huaraches" as a specific classification of merchandise as was done in the Mexican Trade Agreement. Thus, "huaraches" now appear to be again classifiable under the more general statutory term "footwear," appearing in Paragraph 1530(e) of the Tariff Act of 1930, as they were before the Mexican Trade Agreement was consummated. Consequently, the issue concerning the meaning of the term "huaraches" as a classification of merchandise is no longer of any significance. For that reason alone, the petition for a writ of certiorari should be denied.[4]

1. Petitioners contend (Pet. 12-13) that the court below erred in considering, as an aid in in-

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[4] Petitioners allude (Pet. 10-11) to a large volume of import trade which may be affected by the General Agreements on Tariffs and Trade negotiated at the Geneva, Annecy, and Torquay Conventions, 61 Stat. (Pt. 6) A1365-A2054; 86 Treasury Decisions, Advance Pamphlet No. 23, June 7, 1951, page 3. They infer (Pet. 15) that the use by the court below of material contained in the Digests of Trade Data as an aid to construction of the Mexican Trade Agreement in this case establishes a policy which will vitally affect the dutiable status, under other trade agreements, of a very large part of these potential imports. The inference is, of course, entirely unwarranted. There is no basis for assuming that an enormous number of trade-agreement terms are ambiguous, or that the court below will find a need to use material contained in Digests of Trade Data in a large number of cases. In large part, trade agreement tariff schedules in which the United States grants concessions are couched in Tariff-Act terminologies, and it is only in the cases where they depart from those terminologies, and in addition are ambiguous, that the ascertainment of the negotiators' intentions by extraneous aids may become important. And even in those cases, it cannot properly be said that the facts and circumstances will in every case be such as to require resort to like historical data.

terpreting the term "huaraches" appearing in Item 1530(e) of the Mexican Trade Agreement, a definition of that term contained in the Digests of Trade Data prepared and published by the United States Tariff Commission concerning the articles of merchandise on which the United States had made tariff concessions in the Mexican Trade Agreement. The definition of the term "huaraches" appearing in the Digests of Trade Data (p. 223), which was considered by the court below, reads as follows:

> "Huaraches are leather-soled sandals having woven-leather uppers laced to the insole. The insole is machine-stitched to the outsole, and the heel is nailed on. They are used principally by women and girls for beach and casual summer wear."

The trial court found that the footwear involved in the instant case did not conform to the above definition for a variety of reasons:

> Some because the uppers are only partly rather than wholly woven, some because the uppers are not laced through the insole, some because the insole is attached to the outsole by other than machine stitching, and some because the heel is not nailed on. (R. 266.)

In the foreward to the Trade Digests the Tariff Commission said:

> Following the introduction are digests of information concerning products on which con-

> cessions were granted by the United States in the trade agreement with the Mexican Republic. *The material presented has been drawn from the detailed data made available by the United States Tariff Commission, prior to and during the negotiations with Mexico, to the Trade Agreements Committee, which is the interdepartmental body charged with carrying out the trade-agreements program.* Practically all of this information was gathered by the Tariff Commission in compliance with that part of Senate Resolution 334, 72d Congress, 2d Session, which called for a revision of summaries of Tariff information previously compiled by the Commission. [Italics supplied.]

Petitioners' contention is based on their assertion that there is no evidence in the record or in the Digests of Trade Data themselves to show that the information from which the Digests were compiled ever came to the knowledge of the Mexican negotiators of the Trade Agreement with Mexico. From this premise, they argue that the information submitted by the Tariff Commission to the United States negotiators was evidence of the intention of only one of the High Contracting Parties, and that it may not, therefore, be properly considered as a manifestation of the intention of both parties to the Agreement.[5]

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[5] Petitioners have adduced no evidence whatever to show that the Mexican negotiators were not apprized of the definition for "huaraches" submitted by the Tariff Commission directly to the United States negotiators.

Petitioners' argument is without force. The foreword to the Digests of Trade Data prepared by the Tariff Commission, which is the agency authorized by law to furnish the President and the United States Trade Agreement negotiators with tariff information, states that the information contained in the Digests was drawn from detailed material which had been made available to the Trade Agreement Committee, the interdepartmental body charged with carrying out the trade-agreements program. This statement which appears in a published official document should be presumed to be authentic until shown to be otherwise. True, the document does not state specifically that the material therein contained was submitted to the Mexican negotiators, but in the absence of any evidence of a contrary contention advanced by the Mexican Government with respect to the definition of the term "huaraches" which had been adopted by the United States, it is reasonable to presume that the said definition was brought to the attention of the Mexican negotiators and accepted by them, or that it was later acquiesced in by the Mexican Government. This reasoning is implicit in the decision of the court below in this case, as well as in the prior decisions of that court holding that pertinent material in the Digests of Trade Data published by the Tariff Commission in connection with the British Trade Agreement might be used as an aid in interpreting ambiguous terms.

See *United States* v. *Good Neighbor Imports, Inc.*, 33 C. C.P. A. (Customs) 91; *C. H. Powell Co., et al.* v. *United States*, 34 C.C.P. A. (Customs) 29.[6]

Moreover, international agreements are negotiated by experienced and competent persons. Cf. *Rocca* v. *Thompson*, 223 U. S. 317, 332. In the circumstances, it is not credible that persons of that aptitude chosen for that task by the United States would insert in a reciprocal trade agreement a term such as "huaraches", which was peculiar to Mexico and only vaguely known to the American public, without discussing its meaning with the Mexican negotiators and calling to their attention the definition which the United States Government understood would govern its operating scope with respect to the concession granted by it.

The rule which permits reference to negotiations or preparatory works (*Nielsen* v. *Johnson*, 279 U. S. 47, 52) in interpreting ambiguous terms contained in international agreements seems to be one of necessity. Without it, the courts might find themselves with no means whatever to aid them in resolving issues involving ambiguous language in such agreements. This is particularly true in the matter of terms which classify merchandise for duty purposes, since such terms are more often

[6] The same reasoning would seem to underlie the rule that unilateral statements released by the State Department shortly after an international agreement has been signed may likewise be used in connection with ambiguous language employed in the agreement. See *Geo. W. Cole & Co., et al.* v. *United States*, 27 C. C. P. A. (Customs) 201, 206.

highly technical in nature and, in the main, have finely distinguished shades of meaning.[7]

The instant case is an outstanding example of the difficulty which would confront the courts if tariff information such as is involved here might not be used as an extraneous aid to interpretation. The term "huaraches" involved in this case, a Spanish word, particularly Mexican, is not comprehensively defined in the standard English dictionaries. Webster's New International Dictionary defines the term "huaracho" or "huarache" as "A kind of sandal:—usually *pl. Southwestern U. S. & Mex.*" Funk & Wagnalls New Standard Dictionary (1937 ed.) defines it as "A sandal in common wear among the West-Indians: generally in the plural." In the State Department's Press Release on the Mexican Trade Agreement, "huaraches" were said to be "woven-leather sandals." Department of State Bul-

[7] No doubt, the technical nature of these terms has given rise to the long-established rule which permits Summaries of Tariff Information prepared by the Tariff Commission for Committees of Congress to be used as aids in interpreting ambiguous terms appearing in the merchandise schedules contained in tariff acts enacted by Congress. See, *e. g., United States* v. *Blumenthal & Co.*, 13 Ct. Cust. Appeals. 407; *United States* v. *R. F. Downing & Co.*, 17 C. C. P. A. (Customs) 194; *United States* v. *Marshall Field & Co.*, 18 C. C. P. A. (Customs) 403, 406-407; *United States* v. *Clay Adams Co., Inc.*, 20 C. C. P. A. (Customs) 285, 291; *Sears, Roebuck & Co.* v. *United States*, 26 C. C. P. A. (Customs) 161; *C. H. Powell Co., et al.* v. *United States*, 34 C. C. P. A. (Customs) 29. See also *Sheldon & Co.* v. *United States*, 7 Ct. Cust. Appls. 454, wherein tariff information prepared in another agency for Committees of Congress prior to the creation of the Tariff Commission was likewise used.

letin, December 26, 1942, Supplement, Vol. VII, No. 183-A—Publication 1861, page 1051.[8] Patently, such definitions are inadequate as a basis for classifying merchandise for import duty purposes. And the advisory testimony on the meaning of the term "huaraches" adduced at the trial was hopelessly conflicting. Even the trial court stated that "Not all of the witnesses, even those called by the same party, were in agreement as to what was regarded as huaraches in the footwear trade of the United States at the time of the negotiation and promulgation of the Mexican Trade Agreement * * *" (R. 269).

Obviously, then, it would have been impossible for the court below to determine the common meaning of the term "huaraches" from these incomplete definitions or from the vague and conflicting statements made by the witnessees. Thus, it was both reasonable and necessary for the court below to look elsewhere for evidence tending to indicate the scope of the meaning which the parties to the Trade Agreement intended the term to have.[9] In the Digests of Trade Data, it found a comprehensive and practical description of that kind of foot-

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[8] That part of the State Department Press Release quoted in the petition (p. 20) clearly does not contain any workable definition of the term "huaraches."

[9] The reasonableness of this action by the court below is emphasized by comparing it with the reliance placed by the trial court on the partial statement of a witness that "huaraches" are "a type (of footwear) generally worn in Mexico" (R. 271), a meaningless piece of testimony which was completely lacking in the detail necessary to distinguish huaraches from other footwear.

wear, one which had been submitted directly to the United States negotiators of the Trade Agreement and which had thereafter been published for all to see. And in view of the fact that the term "huaraches" was peculiar to Mexico, and correspondingly strange to the English language, the court below could commit no error in presuming, especially in the absence of evidence to the contrary, that the definition was considered, understood, and accepted by both the United States and Mexican negotiators. In the circumstances, particularly since the issue involved a concession granted by the United States, the court below committed no error in using the pertinent material contained in the Digests of Trade Data as an aid in interpreting the term "huaraches," and its conclusion that the definition found in that material specified the meaning of that term as used in the Mexican Trade Agreement was clearly correct.

2. (a) Petitioners' contention with respect to the commercial meaning of the term "huaraches" is not entirely clear. They seemingly contended that the testimony of their witnesses was adequate to prove a commercial meaning for the term "huaraches" different from its common meaning (Pet. 15-17). They then attack the decision of the court below in the prior case of *United States* v. *Fung Chong Co.*, 34 C.C.P.A. (Customs) 40, with respect to its application of the rule governing the character and quantum of proof which must be adduced in order to prove a commercial meaning for im-

ported merchandise different from its common meaning. Petitioners have no status to urge this issue in this Court.

In the course of its opinion in this case the Customs Court said (R. 268-269):

> As has been said, it has not been established nor does it appear to be seriously contended that the commercial meaning of the term "huaraches" differs from the common meaning thereof. Therefore, the doctrine of commercial designation is not here invoked. Much testimony as to the meaning of the term in the trade and commerce of the United States which deals in huaraches was offered by both parties. *Since in this case there is no contention that the commercial meaning of the term differs from the common meaning thereof, this testimony, even though directed to the commercial meaning of the term, is applicable to the common meaning.* As the common meaning of the term is a question of law for the court to determine, such testimony in this situation is advisory only, and not binding upon the court, as it is offered as an aid to the determination of the common meaning of the term. [Italics supplied.]

Petitioners took no appeal from this holding. Indeed it is doubtful whether they might have, since they had not raised the question in the Customs Court. Manifestly then, petitioners were not in the court below, and are not here, in a position to attack the unappealed holding of the Customs Court that a commercial mean-

ing for the term "huaraches" had not been proved. In any event, the correctness of the application by the court below in other cases of the doctrine of the commercial meaning of imported articles, as distinguished from their common meaning, is not an issue before this Court in the instant case, since the court below had no occasion to apply that doctrine herein.

(b) With respect to the common meaning of imported articles, it is well established that evidence relating thereto is advisory only, and is not binding on either the trial court or the appellate court. See, *e.g., United States* v. *Flory & Co.*, 15 Ct. Cust. Appls. 156; *United States* v. *May Department Stores Co.*, 16 Ct. Cust. Appls. 353; *United States* v. *H. A. Caesar & Co.*, 18 C.C.P.A. (Customs) 106; *United States* v. *E. H. Sargent & Co., Inc.*, 20 C.C.P.A. (Customs) 172; *United States* v. *J. J. Gavin & Co.*, 23 C.C.P.A. (Customs) 288; *United States* v. *Best & Co., Inc., et al.*, 24 C.C.P.A. (Customs) 220; *United States* v. *O. Brager-Larsen*, 36 C.C.P.A. (Customs) 1.

In this case, even the trial court, although it concluded that the imported merchandise fell within the common meaning of the term "huaraches," expressed the view that the testimony relating to what the witnesses regarded as "huaraches", was not clear and was hopelessly in conflict (R. 268-269). The error of the trial court in concluding that the testimony established a common meaning for the term "huaraches", which encompassed the

merchandise at bar, is made more glaring by the stress and reliance (R. 271) which it placed on a vague portion of the testimony of petitioners' witness Dagen to the effect that "huaraches" were footwear generally worn in Mexico (See R. 31-32). Since the appellate court was not bound by the evidence adduced or by the conclusion of the trial court as to the common meaning of the term "huaraches", it was fully justified in holding that the vague and conflicting testimony of the various witnesses did not truly reflect a common meaning for that term. And since the term is undoubtedly ambiguous, it was entirely proper for the appellate court to employ an extraneous aid in order to ascertain the meaning which the negotiators of the Trade Agreement most probably had in mind. Having determined, on the basis of reasonably authentic information, that the merchandise involved did not come within the scope which the negotiators had in mind for the term "huaraches," as evidenced by the Tariff Commission's definition of that term, the court was clearly correct in reversing the judgment of the Customs Court, petitioners not having proved that the decisions of the respective collectors of customs were otherwise wrong.

3. Petitioners contend obliquely that the court below arbitrarily denied their petitions for rehearing (Pet. pp. 21-22). One ground advanced by them to sustain their contention is that the court

has denied petitions for rehearing in a large number of other customs cases. Rehearings are not often granted by other courts. Obviously, what the court has done in other cases has no relation to the instant case. Petitioners offered no facts to support their claim that the Mexican negotiators had no knowledge of the definition of the term "huaraches" contained in the Digests of Trade Data by the United States, or that the Mexican Government had raised objections to the use of that definition by the United States in carrying out the Trade Agreement. Consequently, petitioners have shown nothing to support even a suggestion that the action of the court below in denying their petitions for rehearing was arbitrary. Plainly then, this contention of petitioners is without substance.

CONCLUSION

The decision of the court below is clearly correct, and further review is not warranted. The petition for a writ of certiorari should therefore be denied.

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JANUARY 1952

APPENDIX

1. Section 1, Paragraph 1530(e), of the Tariff Act of 1930 (46 Stat. 590, 667; 19 U.S.C. 1001, Paragraph 1530(e) provides in pertinent part:

> Paragraph 1530. * * *
>
> (e) Boots, shoes, or other footwear (including athletic or sporting boots and shoes), made wholly or in chief value of leather, not specially provided for, 20 per centum ad valorem * * *.

2. The pertinent portions of Item 1530(e) of Schedule II of the Trade Agreement entered into between the United States and Mexico, effective on or after January 30, 1943, 57 Stat. (Pt. 2) 833, 892, read as follows:

Tariff Act of 1930 paragraph	*Description of article*	*Rate of duty*
1530(e)	Boots, shoes, or other footwear (including athletic or sporting boots and shoes), made wholly or in chief value of leather, not specially provided for:	
	Huaraches	10% ad valorem
	Slippers (for housewear)	10% ad valorem

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

PETITION No. 495

WEIGERT-DAGEN, WEIGERT-DAGEN SHOE CO.,
J. F. GOLDKAMP & CO.,

Petitioners,

vs.

THE UNITED STATES,

Respondent.

REPLY TO BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

PETITION NO. 495

WEIGERT-DAGEN, WEIGERT-DAGEN SHOE CO., J. F. GOLDKAMP & CO.,

Petitioners,

vs.

THE UNITED STATES,

Respondent.

REPLY TO BRIEF IN OPPOSITION

Clarification appears necessary on the unsupported assertions of the Respondent in his "Brief for the United States in Opposition" (pages 12 (twice), 15 and 16) that the commercial meaning set forth by the trade witnesses for the term "huaraches" was "hopelessly conflicting".

At the trial of this case there was remarkable uniformity among all of the qualified trade witnesses[1] about the commercial meaning of the term "huaraches", each witness using his own method of expression to convey this meaning without parroting one another as the court below implies must be done to establish that a trade meaning is "definite" ("*definite,* uniform and general, and not par-

[1] Witnesses Schmidli, Salem and Sullivan had not bought and sold at wholesale a variety of lines pertinent to the word "huaraches".

tial, local or personal''—*Maddock* v. *Magone,* 152 U. S. 368).

Contrary to Respondent's unsupported assertions, it appears that the testimony of all of these qualified witnesses establishes, without conflict among themselves, that huaraches are an informal or casual type of Mexican leather footwear with at least partially woven uppers or vamps, some with heels and some without. Some of these witnesses indicate that the narrow leather strips in the uppers should be wholly or partly fastened to the soles, but others do not mention this fact or do not regard it as being an important qualifying factor:

Dagen, R. 31-32, 34, 45-46, 55
Kay, R. 59-60
Rubin, R. 70
Schimel, R. 76
Eppenberger, R. 77
Goldstein, R. 80
Weigert, R. 93, 95, 96-97
Shusterman, R. 108, 109
Fuchs, R. 112, 120
Schmitt, R. 133
Orenstein, R. 138, 140
Lichenstein, R. 218
Sherwood, R. 246

In addition all of these qualified trade witnesses agreed unanimously among themselves that Exhibits 1 through 39, 44, 45 and 46 were bought, sold and known as ''huaraches'' in the wholesale trade:

Dagen, R. 31
Kay, R. 59-62
Rubin, R. 70, 73
Schimel, R. 75-76
Eppenberger, R. 77
Goldstein, R. 79-80

Weigert, R. 93
Shusterman, R. 107
Fuchs, R. 112
Schmitt, R. 133-134
Orenstein, R. 138
Sam Lichenstein, R. 218
Sherwood, R. 238-244

Under these circumstances, it appears unreasonable that this unanimous testimony could accurately be referred to as "hopelessly conflicting". Such assertions on this relevant point are unsupported by appropriate record references, and they are most misleading. Indeed it seems to be this very disregard by the customs courts of such unanimity of commercial testimony that has caused the import trade such "keen concern", as evidenced by the Motion of the National Council of American Importers, Inc. for permission to appear as *Amicus Curiae:*

> "The U. S. import trade, as represented by the said National Council, is keenly concerned about the fundamental questions raised in said petition of:
>
> * * * * * *
>
> (2) Whenever traders use different words and unimportant qualifying language to express their views about a commonly accepted well-understood trade meaning of an ambiguous word contained in a trade agreement, is such commercial meaning to be ignored and disregarded * * *?"

(Page 2, Motion by National Council, as filed in this Court in this petition proceeding January 28, 1952.)

Reference by the Respondent to such trade testimony by qualified witnesses as being "hopelessly conflicting" or "vague and conflicting testimony" is unjustified and quite inaccurate; a mistake presumably made in good faith and deriving from the trial court's remarks commenting upon

the different statements made by each witness to express his understanding of the trade meaning, instead of quoting the same definition—The peculiar reasoning of the lower court as applied in this case, but not approved by this Court (now challenged in this Petition action), under which commercial designation cannot be established (on the ground it is not "definite") where all witnesses are not in complete agreement in every respect or use different unimportant qualifying phraseology about a trade term.

Respectfully submitted,

ALLERTON DE CORMIS TOMPKINS,
Attorney for Petitioners.

February, 1952.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

Petition No. 495

WEIGERT-DAGEN, WEIGERT-DAGEN SHOE CO., J. F. GOLDKAMP & CO.,

Petitioners,

v.

THE UNITED STATES,

Respondent.

MOTION FOR PERMISSION TO APPEAR AND FILE A BRIEF AS *AMICUS CURIAE*

The National Council of American Importers, Inc., a non-profit commercial body financed solely by membership dues, is the largest representative organization of American firms engaged in activities related to the United States import trade. It represents this trade as a whole and concerns itself with major developments affecting U. S. imports. Its membership consists of about six hundred and fifty concerns and individuals in all sections of the country actively engaged in all phases relating to the importation of a widely diversified line of merchandise.

The importers-petitioners in the above-named petition are not members of the National Council of American Importers, Inc., and the said National Council is not in-

terested in, or concerned about, the individual item of merchandise (Mexican footwear), the tariff classification of which is being contested in said petition.

The National Council of American Importers, Inc. has carefully investigated the principles involved in the above-named petition and has found that such principles are of fundamental and deep-rooted primary importance to the U. S. import trade. The U. S. import trade, as represented by the said National Council, is keenly concerned about the fundamental questions raised in said petition of:

(1) When interpreting an ambiguous word in a trade agreement which describes a commodity, what if any weight is to be given by the courts to the commercially accepted trade meaning given to this word by qualified traders who deal in the commodity related to such ambiguous word?

(2) Whenever traders use different words and unimportant qualifying language to express their views about a commonly accepted well-understood trade meaning of an ambiguous word contained in a trade agreement, is such commercial meaning to be ignored and disregarded in favor of definitions prepared in secret by a U. S. government agency, not shown to be acceptable to, or approved by, the trade in either country signing the trade agreement?

(3) What if any weight is to be given to statements relating to ambiguous language in a trade agreement, made by the United States Department of State on the day when the agreement is signed?

(4) When interpreting ambiguous words in a trade agreement, what if any weight is to be given to definitions published long after the trade agreement is made, which are extracted by a U. S. government agency from confidential data stated to be made available only to the U. S. negotiators of the trade agreement?

The foregoing fundamental points go far beyond the simple tariff classification issue in which the above petitioners are primarily interested.

The National Council of American Importers, Inc. finds after investigation that the said above petition provides a timely, apt, and perfect vehicle by means of which this Court can pass upon the pertinency and relevancy of the aforementioned questions, and that the further postponement of a final authoritative settlement of these questions will be of great and far-reaching damage to the import trade of the United States. For the foregoing reasons the said National Council desires to express its reasons for requesting the Court to grant the said petition.

Wherefore, the National Council of American Importers, Inc., through its duly authorized attorney, hereby—

Moves for permission to appear and file a brief as *Amicus Curiae* in the foregoing petition, No. 495.

National Council of American Importers, Inc.,

By: George A. Spiegelberg,
160 Broadway
New York 38, N. Y.,
Attorney.

Consented to:

Allerton de Cormis Tompkins,
Attorney for Petitioners.

Consented to:

(not signed—consent refused),
Solicitor General of the
United States of America.

January, 1952.

Affidavit

NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC.
45 East 17th Street, New York 3, N. Y.

STATE OF NEW YORK
CITY OF NEW YORK } ss.:
COUNTY OF NEW YORK

HARRY S. RADCLIFFE, being duly sworn, deposes and says:

That he is the Executive Vice-President of the National Council of American Importers, Inc., 45 East 17th Street, New York, N. Y.; that at the meeting of the Board of Directors of the National Council of American Importers, Inc. on December 20, 1951, at which time twenty-nine Directors representing more than a quorum of the Board were present, the said National Council was authorized and empowered, through its duly authorized attorney, to appear and file a brief as Amicus Curiae in the matter of the Petition pending before the Supreme Court of the United States for a Writ of Certiorari to the United States Court of Customs & Patent Appeals in the case of *Weigert-Dagen, et al.* v. *United States,* No. 495.

That your deponent has read and knows the contents of the attached Motion for Permission to Appear and File a Brief as Amicus Curiae in Petition No. 495, and that the said Motion has been prepared and is being filed in accordance with the authorization of the Board of Directors, which is the governing body of the National Council of American Importers, Inc.

HARRY S. RADCLIFFE.

Subscribed and sworn to before me this 16 day of January, 1952 by Harry S. Radcliffe, known to me to be the

person whose name is subscribed to the within instrument and who in my presence swore to the truth of the statements made in the within instrument, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent stated that he believes the same to be true.

CHARLES COOPERSMITH,
Notary Public

(SEAL)